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JUL 26 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-1839

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

MINNEAPOLIS STAR AND TRIBUNE COMPANY,
Appellant,

vs.

MINNESOTA COMMISSIONER OF REVENUE,
Appellee.

APPEAL FROM THE SUPREME COURT OF MINNESOTA

JOINT APPENDIX

LAWRENCE C. BROWN
Faegre & Benson
1300 Northwestern
Bank Building
Minneapolis, Minn. 55402
(612) 371-5300
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Special Assistant
Attorney General
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St. Paul, Minn. 55145
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Counsel for Appellee

APPEAL DOCKETED APRIL 2, 1982.
PROBABLE JURISDICTION NOTED JUNE 21, 1982.

INDEX TO JOINT APPENDIX

Page

Appendix

H. Summons and Complaint JA-2

I. Answer JA-7

J. Notice of Motion and Motion for Summary Judgment JA-8

K. Affidavit of Donald R. Dwight JA-10

L. Affidavit of Norton L. Armour JA-13

Ex. 1 (Claim for Refund) JA-16

Ex. 2 (Denial of Refund) JA-20

M. Affidavit of Robert M. Shaw JA-23

N. Judgment in Hennepin County District Court JA-27

O. Notice of Appeal to Minnesota Supreme Court JA-29

P. 13 Minn. Code of Agency Rules §1, Tax S & U 409 (1979) JA-30

RELEVANT DOCKET ENTRIES

August 27, 1975—Summons and Complaint filed in Hennepin County District Court, State of Minnesota.

January 25, 1980—Plaintiff's special term note of issue, notice of motion and motion for summary judgment filed.

March 19, 1980—Defendant's answer filed.

March 31, 1980—Plaintiff's motion for summary judgment heard.

May 30, 1980—Order and memorandum granting motion for summary judgment filed, with stay of 30 days.

July 1, 1980—Judgment of District Court entered.

July 24, 1980—Notice of appeal to Minnesota Supreme Court filed.

May 4, 1981—Oral argument before Minnesota Supreme Court.

December 17, 1981—Opinion and syllabus of Minnesota Supreme Court filed, reversing judgment of Hennepin County District Court.

January 5, 1982—Judgment of reversal entered.

January 18, 1982—Notice of appeal to United States Supreme Court filed.

March 12, 1982—Amended notice of appeal to United States Supreme Court filed.

Pursuant to Rule 30.1, the following items are not reproduced herein, having previously been reproduced in the Appendix to Jurisdictional Statement submitted on April 2, 1982, at the referenced pages:

INDEX
APPENDIX TO JURISDICTIONAL STATEMENT

Page

Appendix

A. Opinion of Minnesota Supreme Court A-1

B. Transcript of Oral Argument before Minnesota Supreme Court, May 4, 1981 ..... A-19

C. Order and Memorandum of Hennepin County District Court Judge Donald T. Barbeau, dated May 30, 1980 ..... A-49

D. Transcript of Judgment A-66

E. Amended Notice of Appeal A-68

F. Statutes Involved

(1) 1971 Laws of Minnesota-Extra Session, Chapter 31, Article I A-70

(2) 1973 Laws of Minnesota, Chapter 650, Article XIII A-82

G. Calculation of Effective Rate of Use Tax on Paper and Ink Products A-90

APPENDIX H
Summons and Complaint

STATE OF MINNESOTA
COUNTY OF
HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL
DISTRICT

File No. 718018

Minneapolis Star and Tribune Company,
Plaintiff,

vs.

Commissioner of Revenue,
Defendant.

SUMMONS

THE STATE OF MINNESOTA TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to serve upon plaintiff's attorneys an answer to the complaint which is herewith served upon you within twenty (20) days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated: August 26, 1975.

JACK D. GAGE
BRUCE A. ACKERMAN
Attorneys for Plaintiff
1300 Northwestern
Bank Building
Minneapolis, Minnesota 55402
Telephone: (612) 338-7571

Of Counsel:
FAEGRE & BENSON
1300 Northwestern
Bank Building
Minneapolis, Minnesota 55402

(Caption omitted in printing)

COMPLAINT

For its complaint against defendant, plaintiff states and alleges that:

1. This action is brought under section 297A.35 of the Minnesota Statutes to recover overpayments of use taxes imposed by the State of Minnesota.

2. Plaintiff is a corporation under the laws of Minnesota whose principal place of business is 425 Portland Avenue, Minneapolis, Minnesota 55488.

3. Plaintiff is engaged in the business of publishing newspapers in the State of Minnesota and has been so engaged throughout the period January 1, 1974 through May 31, 1975. The newspapers so published constitute publications which are regularly issued at average intervals not exceeding three months within the meaning of section 297A.25, subd. 1(i) of the Minnesota Statutes.

4. During the period beginning January 1, 1974 and ending May 31, 1975, plaintiff purchased paper and ink products which were used or consumed in producing such newspapers. In compliance with section 297A.14 of the Minnesota Statutes, which provides that the cost of such paper and ink products exceeding $100,000 in any calendar year is subject to use tax, plaintiff paid use taxes with respect to the cost of such paper and ink products in the amount of $874,265.04.

5. By virtue of the interaction of sections 297A.14 and 297A.25, subd. 1(i) of the Minnesota Statutes, plaintiff is one of only approximately ten publishers of newspapers in the State of Minnesota on which the aforementioned use tax is imposed. Other publishers in the State of Minnesota, more than three hundred in number, do not pay such use tax because the cost of the paper and ink products they consume in producing their newspapers is $100,000 or less in any calendar year, and therefore is exempt from such use tax as provided by section 297A.25, subd. 1(i) of the Minnesota Statutes.

6. On August 5, 1975, plaintiff filed with the Sales and Use Tax Division of the Minnesota Department of Revenue a claim for refund of such use taxes in the amount of $874,265.04. The reasons set forth in such claim for refund were as follows:

> Minnesota Statutes 297A.14 and 297A.25, subd. 1(i), as amended respectively by Article XIII, Minn. Laws 1973, c.650, sections 1 and 2, effective January 1, 1974, together provide that the cost of paper and ink products exceeding $100,000 in any calendar year, used or consumed in producing a publication issued at average intervals not exceeding three months, is subject to the Minnesota use tax. Whereas all purchases of paper and ink products used for such purposes were originally exempt from use tax under the sales and use tax statute, and then were all subsequently subject to the use tax as a result of an amendment to M.S. §297A.25, subd. 1(i) made by the Minnesota legislature in 1971 (Minn. Laws 1971, c.31), under the statutory provisions as amended in 1973 and in effect since January 1, 1974, only a small number of the largest newspapers in Minnesota are subject to the use tax on purchases of paper and ink products.

It is the position of the Minneapolis Star and Tribune Company that the 1973 legislation is discriminatory and an abuse of the taxing power of the legislature, and deprives the Company of due process of law and the equal protection of the laws under the Minnesota Constitution of 1857 and the Minnesota Constitution as amended and restructured on November 5, 1974 (Art. 1, Sec. 2; Art. 1, Sec. 7; Art. 4, Sec. 33; Art. 4, Sec. 34; Art. 9; Sec. 1 for the 1857 Constitution, and Art. 1, Sec. 2; Art. 1, Sec. 7; Art. 10, Sec. 1 and Art. 12, Sec. 1 of the restructured Constitution), and also deprives the Company of due process of law and the equal protection of the laws under the 14th Amendment to the Constitution of the United States.

It is the further position of the Minneapolis Star and Tribune Company that the 1973 legislation violates the Company's right to freedom of speech and freedom of the press guaranteed to the Company by the Minnesota Constitution (Art. 1, Sec. 3 of both the 1857 Constitution and the Constitution as amended and restructured on November 5, 1974) and by the 1st and 14th Amendments to the Constitution of the United States.

7. By order of the defendant dated August 6, 1975, Donald S. Mundahl, the Director of the Sales and Use Tax Division of the Minnesota Department of Revenue, notified plaintiff of the denial of said claim for refund in its entirety.

8. The denial of said claim for refund was in error for the reasons enumerated in such claim and set forth herein in paragraph 6. In particular, it is constitutionally impermissible to impose a use tax on paper and ink products used or consumed in producing a newspaper where the sole criterion for imposing such tax is the amount of paper and ink products consumed

by the taxpayer during the taxable year. Such a criterion is not based on any rational distinction between taxpayers subject to the tax, and its effect, whether intended or not, is to impermissibly select and discriminate against certain particular taxpayers within a broad class. In actual fact, by virtue of the size of the exemption, the tax involved herein was intended by the Legislature to be paid by only a small number of the largest newspapers in the State of Minnesota, and the $100,000 exemption figure accomplished just such a result. Imposition of the tax therefore deprives the plaintiff of the due process and equal protection of the laws under both the Minnesota and United States Constitutions, and additionally denies the plaintiff the right to freedom of speech and freedom of the press guaranteed to the plaintiff under each of such Constitutions.

WHEREFORE, the plaintiff demands judgment against defendant in the amount of $874,265.04 with interest thereon as provided by law and its costs and disbursements herein, together with such other and further relief as may be just and equitable in the circumstances.

Dated: August 26, 1975.

JACK D. GAGE
BRUCE A. ACKERMAN
Attorneys for Plaintiff
1300 Northwestern
Bank Building
Minneapolis, Minnesota 55402
Telephone: (612) 338-7571
Of Counsel:
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(Affidavit of service omitted in printing)

APPENDIX I
Answer

(Caption omitted in printing)

ANSWER

The Commissioner of Revenue, defendant herein, for his Answer to the Complaint herein:

I

Admits the allegations in paragraphs 1, 2, 3, 6, 7 and in the first sentence of paragraph 4 of said Complaint.

II

Specifically denies the allegations in paragraph 8, and all allegations which state or imply that Minnesota Statutes 1974, Sections 297A.14 and 297A.25, subd. 1(i), contravene the due process or equal protection provision of the Minnesota Constitution or the United States Constitution, or deprive the plaintiff of the right to freedom of speech or freedom of the press guaranteed under said Constitutions.

III

Except as hereinbefore admitted, qualified or otherwise answered, alleges that he is without knowledge or information sufficient to form a belief as to the truth of any or all of the allegations in said Complaint, and hence denies the same.

WHEREFORE defendant prays that the Court deny the relief requested by the plaintiff and render judgment for the defendant, together with his costs and disbursements herein.

Dated: September 2, 1975.

WARREN SPANNAUS
Attorney General
C. H. LUTHER
Deputy Attorney General
Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
ATTORNEYS FOR
DEFENDANT

APPENDIX J

Notice of Motion and Motion for Summary Judgment

(Caption omitted in printing)

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

To: The Defendant above named and his attorneys, The Honorable Warren Spannaus, Esq., Attorney General, and C. H. Luther, Esq., Deputy Attorney General, Department of Revenue, 249 Centennial Office Building, St. Paul, Minnesota 55415:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Minneapolis Star and Tribune Company, will move the Court, at a Special Term thereof, before The Honorable Patrick W. Fitzgerald, 1553 Court Tower, Hennepin County Government Center, 300 South Sixth Street, Minneapolis, Minnesota, on February 21, 1980, at 9:30 o'clock a.m., or as soon thereafter as counsel may be heard, pursuant to Minn. R. Civ. P. 56, for summary judgment on the grounds that there are no genuine issues as to any material facts and that Plaintiff is entitled to the relief prayed for in its Complaint as a matter of law.

This motion is based upon all of the files, records and proceedings herein, together with the Affidavits and Memorandum attached hereto.

Dated: January 25, 1980.

LAWRENCE C. BROWN
JOHN K. STEFFEN
JOHN P. BORGER
Attorneys for Plaintiff
Minneapolis Star and
Tribune Company
1300 Northwestern
Bank Building
Minneapolis, Minnesota 55402
Phone: (612) 371-5300
Of Counsel:
FAEGRE & BENSON
1300 Northwestern
Bank Building
Minneapolis, Minnesota 55402
NORTON L. ARMOUR, Esq.
Assistant Secretary and
General Counsel
Minneapolis Star and
Tribune Company
425 Portland Avenue
Minneapolis, Minnesota 55488

(Affidavit of service omitted in printing)

APPENDIX K
Affidavit of Donald R. Dwight

(Caption omitted in printing)

AFFIDAVIT OF DONALD R. DWIGHT

Donald R. Dwight, being duly sworn upon oath, states:

1. I am a Senior Vice President of the Minneapolis Star and Tribune Company ("Star Tribune") and Publisher of The Minneapolis Star and the Minneapolis Tribune, and make this Affidavit based upon facts known to me to be true, or upon information derived from the files and records of Star Tribune which I believe to be true.

2. Star Tribune is a publisher of newspapers in the State of Minnesota. It publishes a daily morning edition five (5) days a week, a daily evening edition five (5) days a week, and two separate weekly editions on Saturday and Sunday. During 1974 and 1975, Star Tribune published a daily morning edition six (6) days a week, a daily evening edition six (6) days a week, and a Sunday edition.

3. The two physical components of a newspaper are newsprint (paper) and ink. During the seventeen (17) month period of time involved in this civil action, *viz*, January 1, 1974, through May 31, 1975, Star Tribune paid use taxes on its purchases of newsprint (paper) and ink in excess of $100,000 totalling $874,265.04.

4. The financial records of Star Tribune are maintained on a fiscal year basis, with Star Tribune's fiscal year ending on the last Saturday in February each year. During Star Tribune's fiscal years ending February 23, 1974, and February 22, 1975, Star Tribune's net circulation revenues were $19,874,213 and $21,244,567, respectively. If, instead of imposing a 4% use tax on Star Tribune's purchases of news-

print (paper) and ink in excess of $100,000, the State of Minnesota had imposed a 3% tax on Star Tribune's net circulation revenues, the results would have been approximately as reflected below:

1974: 2/12ths of $19,874,213 = $3,312,369
x .03
$99,371.07

plus

1975: 12/12ths of $21,244,567 = $21,244,567
x .03
$637,337.01

plus

3/12ths of $21,244,567 = $5,311,142
(to account for March-May, 1975)
x .03
$159,334.26

Total Newsprint (Paper) and Ink Use Taxes Paid By Star Tribune for the Period 1/1/74 - 5/31/75	Calculation of Alternative 3% Tax on Net Revenues for the Period 1/1/74 - 5/31/75
$874,265.04	$ 99,371.07
	637,337.01
	159,334.26
	$896,042.34

Thus, it can be seen that the State of Minnesota, by imposing a 4% use tax on Star Tribune's purchases of newsprint

(paper) and ink in excess of $100,000, is accomplishing approximately the same result as if it had imposed a 3% tax on Star Tribune's net circulation revenues.

6. Star Tribune's cost of newsprint (paper) and ink typically represents twenty (20) to twenty-five (25) percent of each dollar of operating expense. In terms of newsprint (paper) consumed, approximately 86% to 92% becomes newspapers actually distributed to readers, with the remaining 8% to 14% representing waste.

7. For Star Tribune's fiscal years 1974 and 1975, Star Tribune paid the following additional taxes to the State of Minnesota:

	1974	1975
Real Estate	$ 355,000	$ 396,000
Corporate Income	$1,000,000	$1,085,333

8. In addition, for calendar years 1974 and 1975, Star Tribune paid payroll taxes to the State of Minnesota of $540,000 and $561,000, respectively (unemployment, worker's compensation and millage).

9. The foregoing tax figures demonstrate that Star Tribune is a responsible "dues paying" corporate citizen of the State of Minnesota.

Further Affiant Sayeth Not.

Dated: January 23, 1980.

DONALD R. DWIGHT

Subscribed and sworn to before me this 23rd day of January, 1980. W. Jean Brewer, Notary Public.

APPENDIX L
Affidavit of Norton L. Armour

(Caption omitted in printing)

AFFIDAVIT OF NORTON L. ARMOUR

Norton L. Armour, first being duly sworn, states:

1. I am Assistant Secretary and General Counsel of Minneapolis Star and Tribune Company ("Star Tribune"), and make this Affidavit based upon facts known to me to be true, or upon information derived from the files and records of Star Tribune which I believe to be true.

2. Attached hereto marked *Exhibit 1* is a true copy of Star Tribune's sales and use tax Claim For Refund dated August 4, 1975, the original of which was received by the Director of the Sales and Use Tax Division of the Department of Revenue, State of Minnesota on August 5, 1975. The schedule of use tax payments, which is the third page of *Exhibit 1*, reflects that, for the seventeen (17) month period of time involved in this civil action, *viz*, January 1, 1974 through May 31, 1975, Star Tribune incurred and paid use taxes on its purchases of newsprint (paper) and ink, as follows:

Aggregate Tax on Newsprint Purchases	Aggregate Tax on Ink Purchases	Total Tax
$846,846.15	$27,418.89	$874,265.04

3. Attached hereto marked *Exhibit 2* is a true copy of the Order Determining Sales and Use Tax Liability bearing the date of August 6, 1975, by which Order Star Tribune's Claim For Refund (*Exhibit 1*) was denied in its entirety.

4. This civil action was commenced on August 27, 1975. By Answer dated September 2, 1975, the Commissioner of

Revenue, defendant in this civil action, admitted the allegations contained in "paragraphs 1, 2, 3, 6, 7 and the first sentence of paragraph 4" of Star Tribune's Complaint. By virtue of the pleadings, the following allegations contained in Star Tribune's Complaint have been admitted:

1. This action is brought under section 297A.35 of the Minnesota Statutes to recover overpayments of use taxes imposed by the State of Minnesota.

2. Plaintiff is a corporation under the laws of Minnesota [*sic*, Delaware] whose principal place of business is 425 Portland Avenue, Minneapolis, Minnesota 55488.

3. Plaintiff is engaged in the business of publishing newspapers in the State of Minnesota and has been so engaged throughout the period January 1, 1974 through May 31, 1975. The newspapers so published constitute publications which are regularly issued at average intervals not exceeding three months within the meaning of section 297A.25, subd. 1(i) of the Minnesota Statutes.

4. During the period beginning January 1, 1974 and ending May 31, 1975, plaintiff purchased paper and ink products which were used or consumed in producing such newspapers.

6. [*sic*] On August 5, 1975, plaintiff filed with the Sales and Use Tax Division of the Minnesota Department of Revenue a claim for refund of such use taxes in the amount of $874,265.04. The reasons set forth in such claim for refund were as follows:

Minnesota Statutes 297A.14 and 297A.25, subd. 1(i), as amended respectively by Article XIII, Minn. Laws 1973, c.650, sections 1 and 2, effective January 1, 1974, together provide that the cost of paper and ink products exceeding $100,000 in any calendar year, used or con-

sumed in producing a publication issued at average intervals not exceeding three months, is subject to the Minnesota use tax. Whereas all purchases of paper and ink products used for such purposes were originally exempt from use tax under the sales and use tax statute, and then were all subsequently subject to the use tax as a result of an amendment to M.S. §297A.25, subd. 1(i) made by the Minnesota legislature in 1971 (Minn. Laws 1971, c.31), under the statutory provisions as amended in 1973 and in effect since January 1, 1974, only a small number of the largest newspapers in Minnesota are subject to the use tax on purchases of paper and ink products.

It is the position of the Minneapolis Star and Tribune Company that the 1973 legislation is discriminatory and an abuse of the taxing power of the legislature, and deprives the Company of due process of law and the equal protection of the laws under the Minnesota Constitution of 1857 and the Minnesota Constitution as amended and restructured on November 5, 1974 (Art. 1, Sec. 2; Art. 1, Sec. 7; Art. 4, Sec. 33; Art. 4, Sec. 34; Art. 9; Sec. 1 for the 1857 Constitution, and Art. 1, Sec. 2; Art. 1, Sec. 7; Art. 10, Sec. 1 and Art. 12, Sec. 1 of the restructured Constitution), and also deprives the Company of due process of law and the equal protection of the laws under the 14th Amendment to the Constitution of the United States.

It is the further position of the Minneapolis Star and Tribune Company that the 1973 legislation violates the Company's right to freedom of speech and freedom of the press guaranteed to the Company by the Minnesota Constitution (Art. 1, Sec. 3 of both the 1857 Constitu-

tion and the Constitution as amended and restructured on November 5, 1974) and by the 1st and 14th Amendments to the Constitution of the United States.

7. By order of the defendant dated August 6, 1975, Donald S. Mundahl, the Director of the Sales and Use Tax Division of the Minnesota Department of Revenue, notified plaintiff of the denial of said claim for refund in its entirety.

Further Affiant Sayeth Not.

Dated: January 23, 1980.

NORTON L. ARMOUR

Subscribed and sworn to before me this 23rd day of January, 1980. W. Jean Brewer, Notary Public.

Exhibit 1

STATE OF MINNESOTA
CLAIM FOR REFUND
Sales and Use Taxes

File this claim with:
Minnesota Department of Taxation
Sales and Use Tax Division
Centennial Office Building
St. Paul, Minnesota 55145

Minneapolis Star and Tribune Company, 425 Portland Avenue, Minneapolis, Minnesota 55488. Sales & Use Tax Account Number: 8124371. Taxable Period: From January 1, 1974 to May 31, 1975. Dates of Payment: See attached schedule. Amount Claimed as Refund: $874,265.04. The time within which this claim may be filed expires under the Sales and Use Tax Law of 1967 and acts amendatory thereof, on Three years from each date of payment (which is date of filing return) listed on attached schedule. Adequate information and sup-

porting documents must be submitted with this claim to enable the Commissioner to determine the validity of the claim. Action on your claim for refund may be delayed until this information is received.

This claim should be allowed for the following reasons:

Minnesota Statutes 297A.14 and 297A.25, subd. 1(i), as amended respectively by Article XIII, Minn. Laws 1973, c.650, sections 1 and 2, effective January 1, 1974, together provide that the cost of paper and ink products exceeding $100,000 in any calendar year, used or consumed in producing a publication issued at average intervals not exceeding three months, is subject to the Minnesota use tax. Whereas all purchases of paper and ink products used for such purposes were originally exempt from use tax under the sales and use tax statute, and then were all subsequently subject to the use tax as a result of an amendment to M.S. §297A.25, subd. 1(i) made by the Minnesota legislature in 1971 (Minn. Laws 1971, c.31) under the statutory provisions as amended in 1973 and in effect since January 1, 1974, only a small number of the largest newspapers in Minnesota are subject to the use tax on purchases of paper and ink products.

It is the position of the Minneapolis Star and Tribune Company that the 1973 legislation is discriminatory and an abuse of the taxing power of the legislature, and deprives the Company of due process of law and the equal protection of the laws under the Minnesota Constitution of 1857 and the Minnesota Constitution as amended and restructured on November 5, 1974 (Art. 1, Sec. 2; Art. 1, Sec. 7; Art. 4, Sec. 33; Art. 4, Sec. 34; Art. 9, Sec. 1 for the 1857 Constitution, and Art. 1, Sec. 2; Art. 1, Sec. 7; Art. 10, Sec. 1 and Art. 12, Sec. 1 of the restructured Constitution), and also deprives the Company

of due process of law and the equal protection of the laws under the 14th Amendment to the Constitution of the United States.

It is the further position of the Minneapolis Star and Tribune Company that the 1973 legislation violates the Company's right to freedom of speech and freedom of the press guaranteed to the Company by the Minnesota Constitution (Art. 1, Sec. 3 of both the 1857 Constitution and the Constitution as amended and restructured on November 5, 1974) and by the 1st and 14th Amendments to the Constitution of the United States.

We (I), the undersigned, declare under the penalties of criminal liability for willfully making a false claim that this claim has been examined and to the best of our (my) knowledge and belief is true and complete.

Corporation Officers: Otto Silha, President, 8/4/75; Norton L. Armour, Secretary, 8/4/75.

Schedule of Use Tax Payments With Respect to Purchases of Newsprint and Ink, all of which Payments are Claimed as Overpayments of Tax

Month of Purchase	Tax on Newsprint Purchases	Tax on Ink Purchases	Total Tax	Date Tax Paid
Jan., 1974	34,309.16	1,270.33	35,579.49	Feb. 25, 1974
Feb., 1974	45,746.66	923.85	46,670.51	Mar. 25, 1974
Mar., 1974	46,937.15	1,067.98	48,005.13	Apr. 25, 1974
Apr., 1974	48,672.92	1,675.88	50,348.80	May 28, 1974
May, 1974	55,128.65	1,664.63	56,793.28	June 25, 1974
June, 1974	52,593.28	872.02	53,465.30	July 25, 1974
July, 1974	43,944.31	2,565.04	46,509.35	Aug. 26, 1974
Aug., 1974	46,553.23	1,176.05	47,729.28	Sept. 25, 1974
Sept., 1974	53,166.20	1,380.47	54,546.67	Oct. 25, 1974
Oct., 1974	53,022.50	1,798.30	54,820.80	Nov. 25, 1974
Nov., 1974	54,056.96	2,057.76	56,114.72	Dec. 26, 1974
Dec., 1974	55,452.14	2,568.61	58,020.75	Jan. 27, 1975
Jan., 1975	41,496.38	1,107.48	42,603.86	Feb. 25, 1975
Feb., 1975	42,922.76	1,236.26	44,159.02	Mar. 26, 1975
Mar., 1975	60,261.00	1,942.77	62,203.77	Apr. 25, 1975
Apr., 1975	54,197.64	2,049.96	56,247.60	May 28, 1975
May, 1975	58,385.21	2,061.50	60,446.71	June 25, 1975
	846,846.15	27,418.89	874,265.04	

Exhibit 2

STATE OF MINNESOTA
DEPARTMENT OF REVENUE — SALES AND USE TAX DIVISION
Centennial Office Building — St. Paul, Minnesota 55145

ORDER DETERMINING SALES AND USE TAX LIABILITY

Minneapolis Star and Tribune Company
425 Portland Avenue
Minneapolis, Minnesota 55488

Date Order Made and Filed and Notice Mailed: Aug. 6, 1975
Account Number: 8124371
Taxable Period: 1-1-74 thru 5-31-75

This is an official Order of the Commissioner of Revenue determining your Sales and Use Tax liability for the taxable period stated. This order was made and filed on the date indicated under the authority vested in the Commissioner of Revenue by Minnesota Statutes, Chapters 270 and 297A. See attached audit report or audit report previously submitted for explanation of adjustments.

If the order results in additional tax, demand is hereby made for payment of the amount shown below. Payment must be made within 30 days from the date this order was made and filed.

If the order results in a refund to you, a refund check will be prepared and mailed after the 30 day waiting period required by law.

If you disagree with this order, an appeal may be filed as provided in Minnesota Statutes 1965, Chapter 271, within 30 days to the Tax Court, Room 190, Centennial Office Building, St. Paul, Minnesota 55155.

LOUIS PLUTLER
Deputy Commissioner
of Revenue
Approved
D. S. MUNDAHL
Director
Sales and Use Tax Division

COMPUTATION OF TAX: See attached sheet for computation of tax.

Total amount due $0 Net Additional/Reduction $0

Refund due you $0

STATE OF MINNESOTA
DEPARTMENT OF REVENUE — SALES AND USE TAX DIVISION
Centennial Office Building — St. Paul, Minnesota 55145

Name: Minneapolis Star and Tribune Company
Address: 425 Portland Avenue
Minneapolis, Minnesota 55488
Account Number: 8124371
Taxable Period: 1-1-74 thru 5-31-75

COMPUTATION OF TAX

Period Ended	Additional/Reduction	Amount	Penalty	Interest	Total
1-31-74	Additional/Reduction	$ -0-		$ -0-	$ -0-
2-28-74	Additional/Reduction	$ -0-		$ -0-	$ -0-
3-31-74	Additional/Reduction	$ -0-		$ -0-	$ -0-
4-30-74	Additional/Reduction	$ -0-		$ -0-	$ -0-
5-31-74	Additional/Reduction	$ -0-		$ -0-	$ -0-
6-30-74	Additional/Reduction	$ -0-		$ -0-	$ -0-
7-31-74	Additional/Reduction	$ -0-		$ -0-	$ -0-
8-31-74	Additional/Reduction	$ -0-		$ -0-	$ -0-
9-30-74	Additional/Reduction	$ -0-		$ -0-	$ -0-
10-31-74	Additional/Reduction	$ -0-		$ -0-	$ -0-
11-30-74	Additional/Reduction	$ -0-		$ -0-	$ -0-
12-31-74	Additional/Reduction	$ -0-		$ -0-	$ -0-
1-31-75	Additional/Reduction	$ -0-		$ -0-	$ -0-
2-28-75	Additional/Reduction	$ -0-		$ -0-	$ -0-
3-31-75	Additional/Reduction	$ -0-		$ -0-	$ -0-
4-30-75	Additional/Reduction	$ -0-		$ -0-	$ -0-
5-31-75	Additional/Reduction	$ -0-		$ -0-	$ -0-
		$ -0-		$ -0-	
	Net Additional/Reduction				$ -0-

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION

Minneapolis Star and Tribune Company
425 Portland Avenue
Minneapolis, Minnesota 55488

Account Number: 8124371
Taxable Period: 1-1-74 thru 5-31-75

Effective January 1, 1974, purchases of paper and ink products in excess of $100,000 in any calendar year, used in producing exempt publications defined in Minnesota Statutes 297A.25 Subdivision 1(i), are subject to Minnesota use tax in accordance with Minnesota Statutes 297A.14. Accordingly, your claim for refund is hereby rejected.

Because of the nature of the claim, a hearing at the administrative level has been waived.

APPENDIX M
Affidavit of Robert M. Shaw

(Caption omitted in printing)

AFFIDAVIT OF ROBERT M. SHAW

Robert M. Shaw, being duly sworn upon oath, states:

1. I am currently the Manager of The Minnesota Newspaper Association ("MNA"). MNA is a Minnesota corporation. Every publisher of a newspaper in the State of Minnesota whose newspaper is qualified as a medium of official and legal publication under the laws of the State of Minnesota is a member of MNA. During 1974 and 1975, I was the Manager of MNA.

2. Each year, MNA publishes Rate Books which, among other things, assemble and set forth factual data about paid

circulation newspapers published within the State of Minnesota. Attached hereto marked Exhibit 1 and Exhibit 2, respectively, are MNA's 1974 and 1975 Rate Books.

3. *During 1974:*

(a) There were an aggregate of 388 paid circulation newspapers published in the State of Minnesota. Of the 388, 341 (or approximately 90%) were non-daily newspapers (weekly, semi-weekly and suburban newspapers). These 341 non-daily newspapers had an aggregate circulation of 764,824 (Exhibit 1, p. 1).

(b) There were an aggregate of 29 daily newspapers, 6 metropolitan and 23 non-metropolitan. The 23 non-metropolitan daily newspapers had an aggregate circulation of 297,078 (Exhibit 1, pp. 1, 30-31). MNA's 1974 Rate Book does not contain circulation data for the 6 metropolitan daily newspapers.

(c) There were an aggregate of 17 "associate member newspapers"* which had an aggregate circulation of 335,256. None of these 17 associate member newspapers published more than two issues a week, all but two being weekly publications (Exhibit 1, pp. 1, 32-33).

4. *During 1975:*

(a) There were an aggregate of 374 paid circulation newspapers published in the State of Minnesota. Of the 374, 328 (or approximately 88%) were non-daily newspapers (weekly, semi-weekly and suburban newspapers). These 328 non-daily newspapers had an aggregate circulation of 755,636 (Exhibit 2, p. 1).

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* An "associate member newspaper" is defined in MNA's articles of incorporation as a publisher of a newspaper which is not qualified for active membership, *i.e.*, is not qualified as a medium of official and legal publication under the laws of the State of Minnesota.

(b) There were an aggregate of 29 daily newspapers, 6 metropolitan and 23 non-metropolitan. The 23 non-metropolitan daily newspapers had an aggregate circulation of 301,787 (Exhibit 2, pp. 1, 30-31). MNA's 1975 Rate Book does not contain circulation data for the 6 metropolitan daily newspapers.

(c) There were an aggregate of 16 "associate member newspapers"** which had an aggregate circulation of 320,195. None of these 16 associate member newspapers published more than two issues a week, all but two being weekly publications (Exhibit 2, pp. 1, 32-33).

5. Based upon my experience with the publication of newspapers in the State of Minnesota, to my knowledge, during 1974 and 1975, no paid circulation newspaper published less than three times a week would have consumed sufficient amounts of newsprint (paper) and ink so as to have exceeded the $100,000 exclusion set forth in Minn. Stat. §297A.14. I am not aware of any unpaid (free) circulation newspaper published in the State of Minnesota during 1974 or 1975 that would have consumed sufficient amounts of newsprint (paper) and ink so as to have exceeded said $100,000 exclusion.

6. Attached hereto marked Exhibit 3 and Exhibit 4, respectively, are true copies of a survey compiled under my direction for Minnesota Daily Newspapers 1974 and 1975.*

** See preceding footnote for explanation.

* Exhibits 3 and 4 identify 31 newspapers, rather than the figure of 29 referred to in ¶¶3(b) and 4(b) of this Affidavit. The two additional newspapers included in Exhibits 3 and 4 are: Marshall, "Messenger-Independent," published three days a week (M-W-F) with a 1974 circulation of 6,309, and a 1975 circulation of 6,734, and Minneapolis, "Finance & Commerce," a financial daily newspaper with a 1974 circulation of 1,782, and a 1975 circulation of 1,782 (Exhibit 1, pp. 1, 16 and 30; Exhibit 2, pp. 1, 16, 30).

Exhibits 3 and 4 identify 31 newspapers published in the State of Minnesota during 1974 and 1975 and, where available, their circulation figures and use taxes paid on newsprint (paper) and ink.

7. As the data in the attached survey discloses, during 1974 the use tax on newsprint (paper) and ink was paid by only 11 publishers of daily newspapers in the State of Minnesota, and during 1975, by only 13 such publishers. Given the facts that, during 1974 and 1975, there were 388 and 374 paid circulation newspapers published in the State of Minnesota, respectively, it appears that, during those years, by virtue of the $100,000 exclusion, the use tax on newsprint (paper) and ink was imposed on only approximately 3% of all newspaper publishers in the State of Minnesota.

8. Stated in terms of the amount of such use tax paid, no publisher of a newspaper situated outside of Minneapolis, St. Paul, Duluth, Rochester, St. Cloud, Mankato, and Winona, the seven largest metropolitan centers in the State of Minnesota during the years in question (1974 and 1975), paid more than a few hundreds of dollars of such use tax, with the majority of the newspapers surveyed entirely escaping the impact of such use tax.

Further Affiant Sayeth Not.

Dated: January 23, 1980.

ROBERT M. SHAW

Subscribed and sworn to before me this 23rd day of January, 1980. John K. Steffen, Notary Public.

(NOTE: The exhibits to this Affidavit have not been reproduced. Exhibits 1 and 2 are Minnesota Newspaper Association rate books for 1974 and 1975 respectively; their relevant information is largely repeated in the Affidavit itself.

Exhibits 3 and 4 are the results of surveys on use taxes paid on newsprint and ink by MNA members during 1974 and 1975; these results are reproduced in full in the opinion of the Minnesota Supreme Court, reproduced in the Appendix to Jurisdictional Statement at A-5-7, nn.4 & 5.)

APPENDIX N

Judgment in Hennepin County District Court

STATE OF MINNESOTA — DISTRICT COURT
COUNTY OF — FOURTH JUDICIAL
HENNEPIN — DISTRICT

File No. 718018

Minneapolis Star and Tribune Company,

Plaintiff,

vs.

Commissioner of Revenue,

Defendant.

JUDGMENT

July 1, 1980

This cause having been regularly placed upon the calendar of the above named Court for the September 1979 General Term thereof, came on for hearing before the Court on the 31st day of March A.D. 1980, upon motion of Plaintiff, and the Court, after hearing the arguments of counsel and being advised in the premises, did, on the 30th day of May 1980 A.D. duly make and file its order granting said motion for judgment herein.

Now, pursuant to said order and on motion of John P. Borger, Attorney for the Plaintiff, IT IS HEREBY ADJUDGED:

1. That the motion of plaintiff for summary judgment be and the same hereby is granted in its entirety; that Minn. Stat. § 297.14, to the extent that it imposes a tax upon the consumption of paper and ink products used to produce publications, be and the same hereby is declared unconstitutional as a denial of equal protection of the laws in violation of Article I, Section 2 and Article X, Section 1 of the Minnesota Constitution and in violation of the Fourteenth Amendment to the Constitution of the United States and as an abridgement of freedom of the press in violation of Article I, Section 3 of the Minnesota Constitution and in violation of the First and Fourteenth Amendments to the Constitution of the United States.

2. That plaintiff have and recover of the defendant in the amount of One million one hundred fifty-nine thousand three hundred twenty-five and 88/100 ($1,159,325.88) Dollars, the amount ordered with interest to date hereof, with the amount of Twenty-nine and 00/100 ($29.00) Dollars, costs and disbursements as taxed and allowed herein, amounting in the whole to the sum of One million one hundred fifty-nine thousand three hundred fifty-four and 88/100 ($1,159,354.88) Dollars.

$1,159,354.88

By the Court
District Court Administrator
By L. E. TOTH
Deputy

JUDGMENT ROLL Filed July 1, 1980 Docketed 8:00 a.m. by Dist. Court Admin. L. E. Toth, Deputy.

APPENDIX O

Notice of Appeal to Minnesota Supreme Court

(Caption)

NOTICE OF APPEAL

District Court File No. 718018

To: Lawrence C. Brown, John K. Steffen and John Borger, of Faegre & Benson, 1300 Northwestern Bank Building, Minneapolis, Minnesota 55402, Attorneys for Plaintiff Minneapolis Star and Tribune Company.

PLEASE TAKE NOTICE, that the Defendant Commissioner of Revenue appeals to the Supreme Court of the State of Minnesota from the Judgment of the District Court entered on July 1, 1980, declaring that Minnesota Statutes § 297A.14 is unconstitutional to the extent that it imposes a tax upon consumption of paper and ink products used to produce publications.

Dated: July 22nd, 1980.

WARREN SPANNAUS
Attorney General
PAUL R. KEMPAINEN
Special Assistant
Attorney General
Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
Telephone: (612) 296-3421
Attorneys for Defendant

APPENDIX P

13 Minn. Code of Agency Rules §1
Tax S & U 409 Publications (1979)

Tax S&U 409 Publications.

(a) In general. The exemption of certain gross receipts from the sales and use tax provided for by Section 297A.25, Subd. 1(i) is related to publications regularly issued at average intervals not exceeding three months.

Generally the exemption applies to gross receipts from sales of:

(1) tangible personal property (other than paper products or ink products,) fuel, electricity, gas or steam used or consumed in the production of any such publication. (See clause (c) of this regulation for rules regarding paper and ink.)

(2) such publications;

(3) any advertising contained in or with such publications.

Machinery, equipment, etc.; furniture and fixtures; fuel, electricity, gas or steam used for space heating or lighting are not exempt under this provision.

(b) Publication defined. The word "publication" encompasses only written or printed matter, such as a newspaper, magazine or other printed periodical regularly issued at average intervals not exceeding three months.

"Publication" includes any legal newspaper as defined by M. S. Chapter 331, together with any supplements or enclosures accompanying such newspaper or representing a part thereof. The term "newspaper" is limited to those publications commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of general interest. The term does not include hand bills,

circulars, flyers, or the like, unless distributed as a part of a newspaper as defined. The term "publication" includes so-called "shoppers guides" distributed by a publisher, where space in such publication generally is available to advertisers for the purpose of inducing readers to purchase goods or services from such advertisers.

House organs, trade, professional and other types of magazines and journals regularly issued at average intervals not exceeding three months are included within the meaning of "publication." "Comic books" are "publications" if published serially under the same title at least once quarterly; however, comic books complete in themselves and without continuity of title and subject matter are not "publications."

The following are representative of items not included within the meaning of "publication": books, including those issued at regular or stated intervals, e.g. books sold by a book-of-the-month or other club or organization; so called "one-shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues; price lists; hand bills; catalogs; programs; score cards; maps; sheet music; yearbooks; directories; bulletins; political newsletters issued during a campaign only, and not of a continuing nature at regular intervals not exceeding three months; loose leaf or similar personal service publications such as tax information services, labor information services, credit or financial information services (however, special reports not distributed generally are deemed personal services), law cases and briefs; realtors' descriptive listings, financial and statistical reports, unless published as a supplement or enclosure with or part of a legal newspaper.

(c) Paper and ink. Taxability of paper and ink products used in producing publications exempt under Section 297A.25, Subd. 1(i) should be determined as follows:

(1) Purchases in period 8-1-67 through 10-31-71 are exempt;

(2) Purchases in period 11-1-71 through 12-31-73 are taxable except paper and ink used as specified in (4) and (5) below;

(3) Purchases subsequent to 12-31-73 in excess of $100,000.00 in any calendar year for use on any publication are taxable except when used as specified in (4) and (5) below;

(4) Paper and ink used in printing an exempt publication of an exempt entity shall not be subject to tax whether such products are purchased by the exempt entity or by a printer who has contracted to print such publication;

(5) The tax shall not apply to paper and ink used in printing any exempt publication as herein defined, which pursuant to a sale as defined in the Sales and Use Tax Law,

(aa) is mailed or shipped to an out-of-state location of an out-of-state purchaser; or,

(bb) is mailed or shipped to an out-of-state subscriber whether the publisher is located in or outside of Minnesota.

Paper and ink purchased for use in producing any publication by a printer who is not also the publisher may be purchased by such printer exempt from sales and use tax provided he gives to the vendor an exemption certificate prescribed by the Commissioner. The publisher of such a publication will be subject to a use tax based upon the cost of such paper and ink products, unless he is exempt under (4) and (5) immediately above.

The person deemed to be producing a publication is the owner and operator who controls the format and who charges advertisers for the privilege of inserting advertisments in his publication, whether or not he prints such publication or pays another to do the printing.

(d) Gross receipts from advertising. The statute specifically provides that the gross receipts from the sale of any advertising material in a publication as defined in Section 297A.25, Subd. 1(i), shall also be exempt. It is further provided that such advertising shall be deemed to be the rendition of a service and not tangible personal property. Further, that persons or their agents engaged in the publication or sale of advertising material shall be deemed to be engaged in the rendition of a service with respect to the gross receipts realized from such news gathering or publishing activities including the sale of such advertising.